

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DONALD HEIMSTAEDT, TODD KORTE,

Plaintiffs,

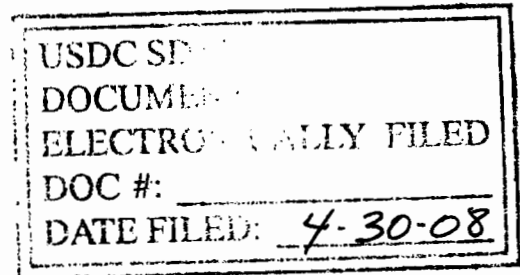
-v-

PREM.AIR NEW YORK, LLC, PREM.AIR
GROUP OF NEW YORK, LLC, PREM.AIR
GROUP, LLC, MCQUAY NEW YORK, LLC,
GEORGE KOUTSSOS, ERIC BERKOWITZ,
MCQUAY NEW YORK PROFIT SHARING PLAN,
AND XYZ TRUSTEES OF THE MCQUAY NEW
YORK, LLC 401(k) PROFIT SHARING PLAN,

Defendants.
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07 Civ. 9389 (JSR)

ORDER



JED S. RAKOFF, U.S.D.J.

For the reasons explained in open court, see tr. 4/29/08, the Court rules as follows on defendants' renewed motion to dismiss certain parts of the Second Amended Complaint:

First: Defendants' motion to dismiss Count V, alleging fraud and misrepresentation, is granted with prejudice.

Second: Defendants' motion to dismiss Count VIII, seeking to pierce the corporate veil, is granted with prejudice with respect to defendant Eric Berkowitz, and denied with respect to defendant George Koutsos.

Third: Discovery, which is otherwise completed, shall proceed with respect to Count VIII only. Plaintiffs may propound requests for documents by no later than May 2, 2008. Defendant Koutsos shall respond to these requests by no later than May 9, unless defendant objects to any part of the requests or feels that he cannot respond to them within one week, in which case the parties shall jointly call

the Court on Monday, May 5, at 5 pm. Until such time as the parties have agreed upon a protective order, any documents produced in response to plaintiffs' request shall remain attorneys' eyes only. Plaintiff shall depose defendant Koutsos, for no longer than half of a day, by no later than May 16. Should the parties face problems abiding by this schedule, they are directed to jointly call the Court.

Fourth: Moving papers for any summary judgment motion must be served by May 30, 2008, answering papers by June 13, and reply papers by June 20. The Court will hold oral argument on any summary judgment motion on June 27 at 2 p.m. At that time, the Court also will conduct a final pretrial conference during which it will, among other matters, set a trial date.

SO ORDERED.

Dated: New York, NY
April 29, 2008


JED S. RAKOFF, U.S.D.J.